

REMARKS

Claims 35-54 are pending. Independent claims 35, 49 and 54 have been amended to include the further feature of a dried layer or coating with the bioactive agent. These amendments are supported, for example, at page 26, line 22 to page 27, line 3. The amendments introduce no new subject matter. Applicants respectfully request entry of the amendments, consideration of the following remarks, and allowance of this application.

Claim Rejections under 35 USC §102

Claims 35-40, 42, 45, 49-50 and 52-53 stand rejected under 35 USC §102(e) for allegedly being anticipated by U.S. Patent 6,369,039 ("Palasis"). This rejection is respectfully traversed.

At a minimum, Palasis fails to teach "the balloon having a dried layer containing the bioactive material on the outer surface of the balloon" (independent claim 35), "the balloon with a dried coating consisting of the lipophilic anti-angiogenic agent" (independent claim 49), or "the balloon catheter having a dried coating consisting of about 5 to about 500 micrograms of a single bioactive coating material consisting of paclitaxel per 25 mm² of the

gross outer surface area of the balloon" (independent claim 54). Palasis thus does not anticipate the independent claims, or any claims dependent thereon. Withdrawal of this rejection is requested.

Claim Rejection under 35 USC §102 or Alternatively §103 (Palasis)

Claim 43 stands rejected under 35 USC §102 or alternatively under 35 USC §103(a) over Palasis (Office Action at page 4). This rejection is respectfully traversed.

Claim 43 is dependent on claim 35. Claim 35 requires the feature of "the balloon having a dried layer containing the bioactive material on the outer surface of the balloon". As noted above, at a minimum, Palasis fails to teach this feature. Withdrawal of this rejection is thus requested.

Claim Rejections under 35 USC §103 (Palasis/Barry)

Claims 41, 44, 46-48 and 54 stand rejected under 35 USC §103(a) for allegedly being obvious over Palasis in combination with published U.S. patent application

US2003/0059454 ("Barry") (Office Action at page 5). This rejection is respectfully traversed.

As noted above, the claims as amended include a dried coating or layer with the bioactive agent, in combination with the other claimed features. The primary Palasis reference does not teach the claimed combinations with this feature, and Barry cannot be properly combined with Palasis to fill the noted shortcomings of Palasis. Withdrawal of this rejection is therefore also requested.

Objection to Oath/Declaration

The Office Action objects to the oath or declaration for allegedly failing to recite a duty to disclose all information material to patentability (Office Action at page 2). Applicants respectfully disagree. The Declaration reads, in relevant part: "I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, 1.56(a)". By acknowledging the duty contained within 37 CFR 1.56(a), which itself recites the duty to disclosed the information "material to patentability", the Declaration meets the requirement. Further, to the extent that it might be

argued otherwise, the USPTO Notice Dated January 22, 2008 (copy attached) indicates that for an Oath/Declaration filed prior to June, 2008, compliance with the express "material to patentability" recitation will not be required when the current language was used. Withdrawal of the objection to the Declaration is therefore requested.

Conclusion

Certain claim amendments have been made in order to expedite the prosecution of this application, without admission to the propriety of the positions stated in the Office Action regarding the examined claims, and without prejudice of their further pursuit in this or a related application. It is submitted that the claim amendments clearly place the application in condition for allowance. In view of the foregoing, allowance of this application containing claims 35-54 is solicited.

Request for Interview

If, for any reason, the Examiner is unable to allow the application as presently amended, request is hereby made for an in-person or telephonic interview prior to any

further office action in the case. The undersigned
attorney should be contacted to arrange the interview.

Respectfully submitted,

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